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No. 96

In the Supreme Court of the United States

OCTOBER TERM, 1931

THE UNITED STATES OF AMERICA, PETITIONER

v.

GREAT NORTHERN RAILWAY COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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PETITION

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit, entered in the above entitled cause on March 15, 1932 (R. 239), affirming a judgment of the District Court for the District of Minnesota (R. 31), denying recovery by the United States of the amount by which it had, as certified by the Interstate Commerce Commission, overpaid to respondent the guaranty authorized by Section 209 of the Transportation Act, 1920.

QUESTIONS PRESENTED

1. Whether a "partial payment" pursuant to Section 212 of the Transportation Act, 1920, of the guaranty authorized by Section 209 of that Act is final and binding upon the United States and precludes recovery of an overpayment of the guaranty, as later determined by the Interstate Commerce Commission.

2. Whether, if the first question is answered affirmatively, the payment to respondent pursuant to Section 212 was invalid because the Commission did not, as required by the Section, definitely ascertain that said sum was due on the guaranty.

STATUTE INVOLVED

The pertinent provisions of the Transportation Act, 1920, are set forth in the Appendix, pp. 22–25, *infra*.

STATEMENT

This is a suit to recover $1,329,785.98, with interest, representing the difference between $12,500,000 (of which $6,500,000 was paid as advances and $6,000,000 as a partial payment) and $11,170,214.02, which the Interstate Commerce Commission finally determined was the amount of respondent's guaranty under Section 209 of the Transportation Act, 1920.

The Transportation Act, 1920, provided for terminating Federal control of the railroads on March 1, 1920. (41 Stat. 457.) By Section 209 (c) of the Act the United States guaranteed to each carrier

which had been under Federal control, and to certain others, that its railway operating income for the following six months should be not less than one-half of the amount of the annual compensation to which it was entitled during the period of Federal control. (*Infra,* p. 22.) Section 209 (g) provided that the Interstate Commerce Commission should, as soon as practicable, ascertain and certify to the Secretary of the Treasury the amounts necessary to make good this guaranty and directed the latter to draw warrants in payment of such certificates. (*Infra,* p. 23.) Section 209 (h) authorized the Commission, to issue to the Secretary of the Treasury certificates for advance payments, upon application therefor during the guaranty period, such advances to be not in excess of the "estimated amount" necessary to make good the guaranty: (*Infra,* p. 24.) The section further provided that the Secretary should not pay such advances until the carrier had executed a contract, "secured in such manner as the Secretary may determine," to repay any amounts received from such advances in excess of the guaranty. (*Infra,* p. 24.)

During the guaranty period respondent applied for $6,500,000 in advances and during 1920 certificates totaling this amount were issued and paid. (R. 16, 28, 39.) On February 14, 1921, respondent filed with the Commission its guaranty claim, amounting to approximately $18,500,000. (R. 41.)

The supporting data filed therewith consisted of a book of 119 pages of tables and statistical matter. (R. 57.) Two days later, February 16th, respondent by letter advised the Commission that it required a $6,000,000 advance in order to meet pressing obligations. (R. 136–137.) Recognizing that under existing law such advance payment could not be made because not applied for during the guaranty period, respondent requested a certificate for this sum to be used, not later than February 24th, "as collateral for a bank loan." (R. 137.)

On February 16, 1921,[1] the chief accountant of the Bureau of Finance of the Commission, who had charge of the examination of returns submitted in support of guaranty claims, began examining respondent's return, assisted by employees of the Bureau working under him. (R. 36–37, 46, 59.) He worked upon this return under instructions to make calculations along the same lines as those which were made when respondent's previous applications were under consideration (R. 46), the latter having required simply a determination that the amounts applied for were not in excess of the "estimated amount" of the guaranty (*supra*, p. 3). It was understood that the certificate was to be used, "not with the expectation of getting money from the United States Treasury," but for credit purposes. (R. 47.)

[1] The chief accountant appears to have been in error in stating on cross-examination (R. 59, 60) that examination of the return began February 14, 1921. (See R. 46, 97.)

Important principles entering into the calculation of the guaranty were then under consideration by the Commission and unsettled. (R. 47.) One of these involved the allowance for maintenance, which required estimating the ratio or ratios to be applied in determining the increased cost of labor and materials in the guaranty period as compared with the "test" period. (R. 44, 58–59.) In this situation, the figures in the return were mathematically checked and "obviously unallowable items or seemingly obviously unallowable items" were eliminated. (R. 74, 98.) The result was to reduce respondent's claim from about $18,500,000 to about $15,700,000 which, after certifying an additional $6,000,000, "would apparently leave a sufficient margin [about $3,200,000] for possible future deductions after the Commission had determined the principles" to be applied in fixing maintenance and other matters which were then under consideration. (R. 74, 212.) The Commission was informed of the principles upon which respondent had calculated its claim, but the Commission neither accepted nor rejected them (except those involved in eliminated items). (R. 58–59, 119.) The chief accountant testified that the examination was "superficial," "very perfunctory," that it was "a pure and simple estimate on our part," that "no part of it whatsoever had any intent of finality" and that he did not regard the Bureau's examina-

tion "as being a sufficient basis for a definite ascertainment for making a Section 212 certificate." (R. 47, 48, 55, 93–94.)

The report of the Bureau of Finance to Division 4 of the Commission, which had charge of guaranty claims, shows $15,705,688 as "Estimated amount necessary to make good the guaranty." (R. 212.) In four other places in the report the Bureau characterizes the conclusions which it had reached as an "estimate" or "estimated." (R. 211–213.) The report recommended "a partial payment for credit purposes only of $6,000,000." (R. 213.) The memorandum forwarding the report to Division 4 is dated February 21, 1921, but the report itself bears the date of February 19, 1921, indicating that it was completed three days after respondent first applied for the certificate. (R. 210, 213.) The Commission's certificate for $6,000,000 was issued February 23, 1921, and forwarded to the Secretary of the Treasury on the same date with a letter stating that the Commission understood that "the present certificate is desired purely for use as the basis of credit with this company's bankers." (R. 133, 134.)

On February 26, 1921, the so-called Winslow bill was enacted, amending the Transportation Act, 1920, by adding a new section designated Section 212. That Section authorized the Commission, if not at the time able finally to determine the whole amount due under Section 209, to certify as a par-

tial payment "any amount definitely ascertained by it to be due." (*Infra,* pp. 24–25.) The Secretary of the Treasury was authorized to pay these certificates, no security from the carrier being required. (*Infra,* p. 25.)

By letter dated February 28, 1921, respondent called the Commission's attention to the change in the law and requested, in lieu of the certificate of February 23, 1921, a new certificate for $6,000,000 with which it could obtain funds from the Treasury. (R. 138–139.) The Bureau of Finance acted upon this application the same day and, without any further examination or consideration of respondent's return, recommended on February 28, 1921, in favor of such a certificate. (R. 49, 214–217.) The Bureau changed its earlier report merely to make it conform to the language of the new section of the Act, eliminating the words "estimate" and "estimated" and recommended cancellation of the earlier certificate. (R. 50, 215–217.) On the following day, March 1, 1921, the Commission issued to the Secretary of the Treasury a second certificate for $6,000,000 and cancelled its certificate of February 23, 1921. (R. 22.) The Secretary of the Treasury shortly thereafter paid respondent this $6,000,000. (R. 16, 28.)

On July 3, 1922, respondent filed in support of its guaranty claim a final return which included all items entered on its books to December 31, 1921. (R. 51.) This return was checked against respond-

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ent's books and its annual and monthly reports, and in the examination various principles determined by the Commission after March 1, 1921, were applied. (R. 44–46, 53, 71.) The result was that the Commission by Division 4 (99 I. C. C. 231) under date of June 17, 1925, issued a report and certificate making a final determination, pursuant to Section 209 (g), of respondent's guaranty at $11,178,887.31. (R. 178–183.) Upon respondent's application, the case was reopened and argued before the full Commission which on June 8, 1926 (111 I. C. C. 318), issued a report and amended certificate fixing respondent's guaranty at $11,170,-214.02. (R. 183–207.)

Respondent then brought suit under the Act of June 18, 1910, c. 309, 36 Stat. 539, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220, to annul the Commission's certificate of June 17, 1925, and its amended certificate of June 8, 1926. This Court affirmed the lower court's decree dismissing the bill for want of jurisdiction. *Great Northern Railway Co.* v. *United States,* 277 U. S. 172.

In its original complaint in this proceeding the United States set forth the payments to respondent aggregating $12,500,000, the Commission's final amended certificate fixing the amount of respondent's guaranty at approximately $11,170,000, and respondent's refusal to repay the difference of about $1,330,000. (R. 1–5.) The District Court

sustained a demurrer to this complaint, holding that Section 212 of the Transportation Act, 1920, made certificates issued thereunder final and binding upon the United States. (R. 7–14.) The United States then filed an amended complaint containing the additional allegation that the overpayment to respondent was made "through mistake and without authority of law." (R. 14–18.) The case was tried to the court, trial by jury being waived. (R. 29.) After trial each party moved for judgment. (R. 31.) The court delivered an oral opinion, holding that the Commission's certificate under Section 212 was not issued by mistake or without authority of law. (R. 121–129.) On appeal, the Circuit Court of Appeals held that the District Court had correctly interpreted the statute and that its judgment on the merits was sustained by the evidence. (R. 226–239.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred (1) in holding that a payment made pursuant to a certificate issued under Section 212 of the Transportation Act, 1920, is final and binding upon the United States, and (2) in holding that the finding of the District Court that the Commission's certificate of March 1, 1921, was not made through mistake or without authority of law was sustained by the evidence.

REASONS FOR GRANTING THE WRIT

1. This Court has not heretofore passed upon the question whether payment to a carrier pursuant to a certificate issued under Section 212 of the Transportation Act, 1920, is final and binding upon the United States so as to preclude recovery of an overpoyment, certified by the Interstate Commerce Commission upon its final determination of the amount of the guaranty authorized by Section 209. A decision thereon by this Court is of general public importance since in at least 28 cases the Commission, upon final determination of the guaranty, has found a previous overpayment. (R. 187.) In 22 of the 28 cases the carrier has refunded or promised to refund the overpayment. (R. 187.) Overpayments under Section 212 aggregate about $3,780,000 and, exclusive of the instant case, about $2,450,000; of this amount about $2,260,000 (including interest) has been refunded to the United States. If the decision below is not reviewed by this Court, numerous suits will undoubtedly be brought against the United States to recover the amounts refunded to it on account of overpayments under Section 212.

2. The decision of the Circuit Court of Appeals holding that payment of a certificate issued under Section 212 is final and binding upon the United States is in direct conflict with the decision of the Court of Appeals of the District of Columbia in *Northern Pacific Ry. Co.* v. *Interstate Commerce*

Commission, 23 F. (2d) 221, certiorari denied, 275 U. S. 572. In that case the carrier filed in the Supreme Court of the District of Columbia a petition for a common law writ of certiorari to review and set aside a final certificate issued by the Commission under Section 209 (g) of the Transportation Act, 1920. The carrier contended that this certificate was beyond the scope of the Commission's powers and null and void because for less than the aggregate amount of prior certifications under Section 209 (h) and Section 212. The Court of Appeals rejected this contention, saying (p. 224) that Section 212 was "an emergency measure" and that if the Commission had adopted the carrier's interpretation of the Section, "the real purpose of Congress would have been frustrated, since of necessity considerable delay would have ensued." Both courts below recognized that their construction of Section 212 was in conflict with that of the court in the *Northern Pacific Co.* case. (R. 12, 243.)

3. A review of the decision below holding that there was sufficient evidence to support the finding that the Commission's certificate of March 1, 1921, was not made through mistake or without authority of law is also of importance. This is primarily not a question of fact, but a question of law, depending upon an interpretation of what kind of a determination by the Commission is required by Section 212. The evidence is uncontradicted that

the employee charged with the duty of examining, on behalf of the Commission, respondent's return did not in his examination do more than estimate the amount of respondent's guaranty, and that the Bureau of Finance in reporting the result of this examination to the Commission expressly characterized its conclusions as estimates. Nevertheless, the only authority conferred upon the Commission by Section 212 is to certify as a "partial payment" any amount "definitely ascertained by it to be due." That the question of what constitutes a valid determination by the Commission under Section 212 may arise in other litigation if this case is not reviewed by this Court, is indicated by the similarity between the facts of this case and those in *Northern Pacific Ry. Co.* v. *Interstate Commerce Commission, supra,* where an overpayment of about $1,320,000 was made on a certificate issued four days after the enactment of Section 212.

THOMAS D. THACHER,
Solicitor General.

MAY, 1932.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the District Court on the demurrer (R. 7) is reported in 46 F. (2d) 999. The opinion of the District Court upon the merits (R. 121) and that of the Circuit Court of Appeals (R. 227) have not been reported. The reports of the Interstate Commerce Commission upon final determination of respondent's guaranty are reported as *Guaranty Settlement with Great Northern Railway Co.*, 99 I. C. C. 231, and 111 I. C. C. 318.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 15, 1932. (R. 239.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED, STATEMENT, ETC.

The questions presented, statute involved, statement of the case, and specification of errors relied upon are set out in the petition and in the Appendix, *infra*, pp. 22–25.

ARGUMENT

I

CERTIFICATIONS UNDER SECTION 212 OF THE TRANSPORTATION ACT, 1920, ARE NOT FINAL AND BINDING UPON THE UNITED STATES

Respondent has not set up any defense in the nature of estoppel; that is, that it in any way changed its position in reliance upon the understanding that the payment to it under Section 212 was a *pro tanto* final settlement. It necessarily admits that the Commission, which under the statute was the final arbiter of the amount of the guaranty, has found that respondent has received from the United States more than the amount of the guaranty payable to it under Section 209. It rests upon the technical defense that Section 212 bars the recovery of this overpayment.

Section 212 does not expressly bar recovery by the United States of an overpayment made thereunder. We submit that its wording indicates the contrary. The section authorizes a "partial payment." A payment which is in excess of the total obligation cannot be said to be a partial payment thereof.

The Circuit Court of Appeals appears to have regarded Section 212 as authorizing certificates having the same force and effect as certificates under Section 209 (g) determining the full amount of the guaranty. The latter section does not expressly prohibit subsequent correction of the certificates

which it authorizes, but such prohibition may perhaps be implied, to the end that finality should be imparted to the Commission's final determinations. No such reason of policy exists for imparting finality to the determinations of the Commission in passing upon applications for partial payments, which presuppose further consideration and further determination.

We submit that the construction of Section 212 adopted by the courts below is inconsistent with the avowed purpose of Congress in enacting this section. The purpose was to give relief to the railroads in the credit crisis which then confronted them by making immediately available to them a part of the guaranty which they would ultimately receive from the Government.[2] Such purpose presupposed prompt and necessarily tentative decisions by the Commission. But it was also the duty of the Commission to guard against overpayments of the guaranty. It could not, consistently with this duty, authorize the early payments contemplated by Congress if, when doing so, it was finally concluding the rights of the United States and barring the recovery of any payments later found to be excessive.

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[2] See statement of Chairman of House Committee on Interstate Commerce when reporting the bill which became the Act of February 26, 1921 (Cong. Rec., vol. 60, pt. 3, p. 2737), and the House Committee's report on the bill (H. Rep. No. 1243, 66th Cong., 3rd Sess., p. 3).

The Circuit Court of Appeals (R. 235–236) gave weight to the fact that Section 209 (h) made the payment of advances contingent upon the carrier's execution of a contract, secured as the Secretary of the Treasury might determine, to repay any advance received in excess of the guaranty, and that the House rejected an amendment which would have added this requirement to payment of certificates under Section 212. The proposed amendment was opposed on two grounds, first, that it would interfere with the effectiveness of the relief to carriers since many short lines could not furnish adequate security and, second, that there would in fact be no overpayments since the Interstate Commerce Commisison was authorized to certify only those amounts which it had definitely ascertained were due. (Cong. Rec., vol. 60, pt. 3, pp. 2812–2814.) We submit that rejection of the amendment under these circumstances does not show that Congress intended by Section 212 to bar the United States from recovering payments made thereunder if in excess of what was finally determined to be due. Such a construction of Section 212 brings it into conflict with Section 209 (g), under which the amount of the guaranty was to be determined by the Commission and liquidated by the Secretary of the Treasury.

In the courts below respondent urged that paragraph (b) of Section 212 supports its construction of the statute. That paragraph provides that the

Commission, in computing partial payment certificates, may include an estimate of the net effect of deferred credits and debits provided the interested carrier has agreed to the estimate. (*Infra*, p. 25.) It also provides that any amount so agreed to shall be prima facie but not conclusive evidence of its correctness in final settlement. From this provision respondent draws the inference that all other items included in the computation of partial payment certificates were to be conclusive in final settlement. The inference seems wholly unwarranted. The explanation of the provision is that Congress was providing for something in the nature of a settlement as to deferred items, and, without the express contrary declaration in the statute, this settlement might have been regarded as conclusive, as the bill originally provided. (Cong. Rec., vol. 60, pt. 3, p. 2736.)

It is a familiar rule of construction that statutes granting privileges or relinquishing rights must be construed favorably to the Government. *Caldwell* v. *United States*, 250 U. S. 14, 20; *Slidell* v. *Grandjean*, 111 U. S. 412, 437. We submit that the rule is applicable here. While the guaranty authorized by Section 209 is not a gift or subsidy, it is also not in fulfillment of any legal obligation, and, broadly speaking, it authorized a large payment of public funds without substantial consideration therefor. See *Texas & Pacific Ry. Co.* v. *United States*, No. 634, decided by this Court May 16, 1932.

II

THE COMMISSION ISSUED ITS PARTIAL-PAYMENT CERTIFICATE OF MARCH 1, 1921, THROUGH MISTAKE OR WITHOUT AUTHORITY OF LAW

Section 212 authorizes the Commission to certify as partial payments only amounts "definitely ascertained by it to be due." The courts would probably hesitate, in the absence of convincing evidence, to hold that the Commission had issued a certificate under Section 212 without the definite ascertainment required by law. But it is our contention that there is convincing evidence that the Commission did not prior to March 1, 1921, definitely ascertain that an additional $6,000,000 was due respondent on account of the guaranty.

It can, we believe, be contended with great force that until the Commission had determined the basic principles to be applied in computing the guaranty, it was not possible definitely to ascertain that any particular amount was due on account of the guaranty to respondent. It does not seem reasonable to suppose that the statute authorized the Commission definitely to ascertain any amount as due until it had determined the underlying principles to be applied, at least if the statute meant that any decision then made by the Commission forever concluded the rights of the United States. But in this case there is convincing additional evidence that the Commission did not make a definite ascertainment.

The Commission's only examination of respondent's data was prior to the enactment of Section 212. (*Supra,* p. 7.) The accountant of the Bureau of Finance, who had charge of the examination, was instructed to make the same kind of examination as those made upon applications for advances, which required merely an estimate of the guaranty. (*Supra,* p. 4.) The examination was made with the understanding that the certificate requested would be used for credit purposes only, not for obtaining money from the United States Treasury. (*Supra,* p. 4.) The Bureau of Finance, in reporting to the Commission, characterized the conclusions reached as estimates. (*Supra,* p. 6.) When the law was changed the Bureau merely revised its report to conform to the language of Section 212, eliminating the words "estimate" and "estimated." (*Supra,* p. 7.) But if the examination when first made only resulted in an estimate, it did not become something different by being later called an ascertainment.

In its computation of respondents partial-payment certificate, the Commission did not eliminate deferred items from the total of respondent's claim, which at the end of the guaranty were a little over $1,000,000. (R. 66, 215–217.) Prior to issuing its certificate of March 1, 1921, no agreement was reached with the carrier as to the net effect of deferred items. (R. 66, 215–217.) The inclusion of deferred items in the computation without such an

agreement with the carrier was in violation of paragraph (b) of Section 212. We submit that on this ground alone the Commission's certificate was invalid.

Briefly, what the Commission did was this: It eliminated those items in respondent's claim which on a hasty examination it considered "seemingly obviously unallowable." This reduced respondent's claim to approximately $15,700,000, of which $6,500,000 had been advanced. Respondent had applied for a certificate for $6,000,000, which would make the total certifications $12,500,000. The Commission, estimating that the margin of $3,200,000, or about 20%, would cover errors, certified an additional $6,000,000. We submit that, if under Section 212 any decision made thereunder by the Commission forever concluded the United States, the statute required a more definite ascertainment than this.

CONCLUSION

The decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Court of Appeals of the District of Columbia in *Northern Pacific Ry. Co.* v. *Interstate Commerce Commission*, 23 F. (2d) 221, *supra*. A decision by this Court on the issues here presented is of the utmost importance in order that it may be finally determined whether the United States is entitled to recover overpayments made under Section 212 of the

Transportation Act, 1920, and whether it is entitled to retain such overpayments when they have been refunded. It is therefore respectfully submitted that the petition for certiorari should be granted.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
CHARLES H. WESTON,
ELMER B. COLLINS,
Special Assistants to the Attorney General.

MAY, 1932.

APPENDIX

Section 209 of the Transportation Act, 1920, c. 91, 41 Stat. 464, 465, 466 (U. S. C., Title 49, sec. 77), provides:

> SEC. 209 (a). When used in this section—
>
> The Term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; * * *.
>
> The term "guaranty period" means the six months beginning March 1, 1920.
>
> The term "test period" means the three years ending June 30, 1917; * * *.
>
> (b) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this section.
>
> (c) The United States hereby guarantees—
>
> (1) With respect to any carrier with which a contract (exclusive of so-called co-operative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation, * * *.
>
> * * * * *

(f) In computing railway-operating income, or any deficit therein, for the guaranty period for the purposes of this section—

* * * * *

(3) There shall not be included in operating expenses, for maintenance of way and structures, or for maintenance of equipment, more than an amount fixed by the Commission. In fixing such amount the Commission shall so far as practicable apply the rule set forth in the proviso in paragraph (a) of section 5 of the "standard contract" between the United States and the carriers (whether or not such contract has been entered into with the carrier whose railway-operating income is being computed);

* * * * *

(5) The Commission shall require the elimination and restatement of the operating expenses and revenues (other than for maintenance of way and structures, or maintenance of equipment) for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period.

(g) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guar-

anty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

(h) Upon application of any carrier to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its fixed charges and operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by the carrier of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this section such carrier will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

* * * * *

The Act of February 26, 1921, c. 72, 41 Stat. 1145 (U. S. C., Title 49, sec. 79) provides:

That the Transportation Act, 1920, is hereby amended by adding after section 211 a new section to read as follows:

SEC. 212. (a) In making certifications under section 204 or section 209, the Commis-

sion, if not at the time able finally to determine the whole amount due under such section to a carrier or the American Railway Express Company, may make its certificate for any amount definitely ascertained by it to be due, and may thereafter in the same manner make further certificates, until the whole amount due has been certified. The authority of and direction to the Secretary of the Treasury under such sections to draw warrants is hereby made applicable to each such certificate. Warrants drawn pursuant to this section, whether in partial payment or in final payment, shall be paid: (1) If for a payment in respect to reimbursement of a carrier for a deficit during the period of Federal control, out of the appropriation made by section 204; (2) if for a payment in respect to the guaranty to a carrier other than the American Railway Express Company, out of the appropriation made by subdivision (g) of section 209; and (3) if for a payment in respect to the guaranty to the American Railway Express Company, out of the appropriation made by the fifth paragraph of subdivision (i) of section 209.

(b) In ascertaining the several amounts payable under either of such sections, the Commission is authorized, in the case of deferred debits and credits which can not at the time be definitely determined, to make, whenever in its judgment practicable, a reasonable estimate of the net effect of any such items, and, when agreed to by the carrier or express company, to use such estimate as a definitely ascertained amount in certifying amounts payable under either of such sections, and such estimates so agreed to shall be prima facie but not conclusive evidence of their correctness in amount in final settlement.

U. S. GOVERNMENT PRINTING OFFICE: 1932